

**DOCKET NO.: ALLE0063-110**  
**(17368 (BOT))**  
**Serial No. 10/748,999**

**PATENT**

### **REMARKS**

Claims 1-14 were pending. Claims 3, 5, 10 have been amended to correct a typographical error. Claims 1 and 5 have been amended by incorporating elements of claims 4 and 6 respectively. Claim 10 has been amended to include elements of claim 4. New dependent claims 15-20 have been added, which are directed to the specific space between the perforations and the number of perforations the injection guide comprises. Support for the amendments and the new claims are clearly supported throughout the specification, and for example, at pages 23-24.

Claims 4 and 6 have been canceled without prejudice. Claims 11-14 have been canceled without prejudice as they are directed to a non-elected invention. Please note that claims 13 and 14 had originally been misnumbered as 11 and 12, respectively. They would have been considered to have been claims 13 and 14 and any new claims will be based on such numbering.

Upon entry of the above amendment, claims 1-3, 5, 7-10, 15-20 will be pending in this application.

No new matter is added.

#### **I. Overview**

With regard to the section 102(b) rejections, it is Applicant's belief that the claims are patentable over the references cited because the references do not teach or even suggest an injection guide comprising:

- (a) a plurality of **staggered** perforations,
- (b) wherein the staggered perforations are spaced apart by a **uniform distance**.

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The definition for staggered perforation is set forth in the specification at page 20, line 29 to page 21, line 3, and is duplicated below. Also, the attached Exhibit 1 shows a set of staggered perforations, and Exhibit 2 shows a set of non-staggered perforations.

## **II. Restriction Requirement**

Applicant affirms the telephone election of Group I (claims 1-10) as indicated in the present office action.

### **Traversal of Restriction Requirement**

Applicant respectfully asserts that the restriction requirement is improper because the Office has not shown that examination of all of the claims would constitute a serious burden on the Office as required for substantiating a proper restriction of the claims. For example, all the claims relate to an **injection guide for botulinum toxin**. Thus, all potential prior art would surface when the Office conducts a prior art search directed to an injection guide for botulinum toxin.

## **III. Objections:**

Claim 3 was objected to due to a typographical error, which has been corrected by amendment. Claims 11 and 12 have been renumbered as claims 13 and 14 to correct a typographical error. In view of the foregoing amendments, Applicant respectfully requests that the objections to the claims be withdrawn.

### III. The Claims are Novel

#### Gardiner

Claims 1-10 are rejected under 35 U.S.C § 102(b) as being anticipated by Gardiner (U.S. Patent 4,228,796). Applicant respectfully asserts that Gardiner does not anticipate the claimed invention because Gardiner does not teach or even suggest an injection guide comprising a plurality of staggered perforations as described in the pending claims.

The present application defines staggered as meaning

if a straight line A is drawn through all the perforations of any one row of perforations comprising the injection guide, then a line B drawn at a right angle to any one of the perforations upon the line A will not intersect any perforation present in a row of perforations immediately adjacent to (i.e. in the row above or in the row below the line A row) the perforations on the line A.

(Specification, page 20, line 29 to page 21, line 3). (See also Exhibits 1 and 2, which show an example of staggered and non-staggered perforations, respectively). The guides disclosed in Gardiner do not comprise a plurality of staggered perforations. As seen in Figures 1-5 of Gardiner, the guides do not have a plurality of staggered perforations. For example, if one were to draw a straight line through the perforations in the guides shown in Figures 1-5 and then draw a line that is at a right angle (i.e., perpendicular) to that line, one would intersect a perforation that is immediately adjacent to the perforation in the first line. Therefore, the guides shown in figures 1-5 do not comprise a plurality of staggered perforations.

With regard to the guide shown in Figure 5 of Gardiner, even if the Office makes the argument that the perforation marked with "SUN" is staggered with respect to the perforation marked with "FRI" or "SAT", it is important to recognize that the claimed invention recites a "plurality" of staggered perforations, i.e., more than one staggered

perforation, whereas Gardiner would have at most one “staggered perforation.” Thus, the guide shown in Figure 5 of Gardiner does not teach or even suggest the “plurality of staggered perforations”.

Gardiner also does not disclose or even suggest an injection guide comprising 40, 60, or 80 perforations. Gardiner also does not disclose or even suggest an injection guide where the perforations are evenly spaced or where the perforations are evenly spaced by either 1.5 or 2.0 cm.

Accordingly, because Gardiner does not teach each and every element of the pending claims Gardiner fails to anticipate the claimed invention. Thus, the claims are patentable over Gardiner, and Applicant respectfully requests the that Office to withdraw the rejection under 102(b).

**Katz**

Claims 1-10 are rejected under 35 U.S.C § 102(b) as being anticipated by Katz (U.S. Patent 4,642,096). Applicant respectfully asserts that Katz does not anticipate the claimed invention because Katz does not teach or even suggest an injection guide comprising a plurality of staggered perforations as described in the pending claims.

As discussed above, staggered means that if one were to draw a perpendicular line through a line of perforations and then the line that is perpendicular to that line one would not intersect a perforation in a row that immediately adjacent to the initial line. The guide described in Katz have perforations that are linear and not staggered. The Office refers to the guides shown in Figures 1 and 2 and column 5, lines 30-60 of Katz in support of its anticipation rejection. However, if one were to draw a line through any of the rows shown in figures 1 and 2 and then draw a line that is perpendicular to that initial line one would intersect a perforation in a row that is immediately adjacent to the initial line. The guides shown in Figures 1 and 2 of Katz do not have a single perforation that would be considered “staggered” as defined by the present application.

The text of Katz also does not teach perforations that are staggered. The text pointed to by the Office describes what is shown in Figure 2 (*See* Katz, Column 5, line 34). The text does not describe any pattern of perforations that would be considered to be staggered using the definition of the present application.

Accordingly, because Katz does not teach each and every element of the pending claims Katz does not anticipate the claimed invention. Thus, the claims are patentable over Katz, and Applicant respectfully requests the that Office to withdraw the rejection under 102(b).

#### **Kaauwen**

Claims 1-10 are rejected under 35 U.S.C § 102(b) as being anticipated by Van Kaauwen (WO 02/068028A1)). Applicant respectfully asserts that Van Kaauwen does not anticipate the claimed invention because Katz does not teach or even suggest an injection guide comprising a plurality of staggered perforations wherein the staggered perforations are spaced apart by a **uniform distance**.

Van Kaauwen describes an injection guide for locating sites on a user's body and although the Office states that the guide shown in figure comprises a plurality of staggered perforations, it is important to recognize that the perforations are not uniformly spaced. For example, in Figure 1a of Van Kaauwen the perforations that are numbered 17, 18, 19, 20 are not uniformly spaced. Van Kaauwen also does not disclose a guide as described in the pending claims that comprise 40, 60, or 80 perforations or where the perforations are spaced apart by 1.5 or 2.0 cm.

Accordingly, because Van Kaauwen does not teach each and every element of the pending claims, Van Kaauwen does not anticipate the claimed invention. Thus, the

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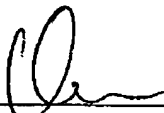
**PATENT**

claims are patentable over Van Kaauwen, and Applicant respectfully requests the that Office to withdraw the rejection under 102(b).

In view of the foregoing, Applicant submits that the pending claims are in condition for allowance, and an early Office Action to that effect is earnestly solicited.

Respectfully submitted,

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